

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

JACOB SMITH,

Petitioner,

vs.

LYNN GUYER; ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Respondents.

Cause No. CV 21-14-H-SEH

ORDER

On February 11, 2021, Petitioner Jacob Smith (“Smith”) filed a Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody.¹ On July 22, 2021, he was ordered to show cause as to why his petition should not be dismissed as time-barred and procedurally defaulted.² Three extensions of time in which to respond have been granted.³ On October 22, 2021, Smith was advised that he had until 4:45 p.m. October 29, 2021, to file his response or his case would be dismissed.⁴ Smith has not filed a response.

¹ Doc. 1.

² Doc. 6.

³ See Docs. 8, 10 & 12.

⁴ Doc. 12 at 2.

Smith has failed to comply with the Court's Order.⁵ Relevant factors: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions," have been weighed.⁶ None warrant application here. The case is dismissed.

No basis to encourage further proceedings exists.⁷ A certificate of appealability is denied.⁸

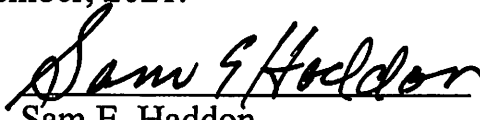
ORDERED:

1. Smith's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody⁹ is DISMISSED.

2. The Clerk of Court is directed to enter, by separate document, a judgment in favor of Respondents and against Petitioner.

3. A certificate of appealability is DENIED.

DATED this 5th day of November, 2021.


Sam E. Haddon
United States District Judge

⁵ See Fed. R. Civ. P. 41(b); see also *Link v. Wabash Railroad Co.*, 370 U.S. 626, 629–30 (1962); see also *Pagtalunan v. Galaza*, 291 F. 3d 639, 641–45 (9th Cir. 2002).

⁶ *Carey v. King*, 856 F. 2d 1439, 1440 (9th Cir. 1988); see also *Pagtalunan*, 291 F. 3d 642.

⁷ *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

⁸ 28 U.S.C. § 2253(c)(2); Rule 11(a), Rules governing § 2254 Proceedings.

⁹ Doc. 1.